MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
ONGOING IMPLEMENTATION OF CAPACITY DEVELOPMENT REQUIREMENTS
FOR NEW COMMUNITY AND NON-TRANSIENT NON-COMMUNITY WATER SYSTEMS
AND FOR EXISTING WATER SYSTEMS RECEIVING SRF LOANS
JULY 1, 2024 THROUGH JUNE 30, 2025

INTRODUCTION

The Montana Department of Environmental Quality (MDEQ) has the statutory authority to review and approve new public water systems or modifications of existing systems. MDEQ also has primacy under the Safe Drinking Water Act to monitor public water systems for bacteriological, chemical and radiological constituents. MDEQ has adopted rules and design circulars governing the design, construction and monitoring of public water systems.

In accordance with the 1996 amendments to the Safe Drinking Water Act (Public Law 104-182), MDEQ developed and adopted capacity development regulations for new community and non-transient non-community water systems commencing operation after October 1, 1999. MDEQ inserted capacity requirements into the department's public water supply rules and design circulars referenced by those rules. After review and approval by the Board of Environmental Review (BER), final rules became effective on September 10, 1999.

Montana's Drinking Water State Revolving Fund Loan Program received EPA approval and was awarded its first (FY 1997) capitalization grant on June 30, 1998. Since then the program has provided loans to water systems at below-market interest rates for the construction of public health-related infrastructure improvements. As of June 30, 2025, the program has closed on 545 community loans throughout the state. This total includes July 1, 2024, through June 30, 2025, where the program closed 46 additional loans to 24 water systems.

Section 1452(a)(3) of the 1996 amendments to the Safe Drinking Water Act establishes that no assistance from the Drinking Water SRF shall be provided to a public water system that "does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this title" or is in significant non-compliance with a national primary drinking water regulation or variance. Section 1452(a)(3) further specifies that a system without adequate capacity or in significant non-compliance *may* receive SRF assistance if the following provisions are met:

1. For those systems that are in significant noncompliance, the use of the assistance ensures compliance; and

2. For those systems without adequate capacity, "the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rules, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this title over the long term."

BASIS OF AUTHORITY

MDEQ is granted legal authority for capacity requirements by Title 75, Chapter 6, MCA, Public Water Supplies, Distribution and Treatment. Section 75-6-103 specifically grants the BER authority to adopt rules for the following:

1. the siting, construction, operation and modification of a public water supply system or public sewage system; and

2. the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of 75-6-103.

Another important provision of this statute is that the BER and MDEQ are granted the authority to take enforcement actions against non-complying systems, along with the ability to assess administrative, civil or criminal penalties.

MDEQ has rules and design circulars that establish parameters for the design, construction, operation and monitoring of public systems. Title 17, Chapter 38, Sub-chapter 1, Administrative Rules of Montana (ARM), provides the criteria for the design and construction of a public water supply. Title 17, Chapter 38, Sub-Chapter 1 references the design circulars used for public water supply systems: DEQ 1 is the design circular for community water systems and DEQ 3 is the design circular for non-community water systems. The design circulars provide standards for the siting and design criteria for new or modified public water systems. Title 17, Chapter 38, Sub-Chapter 2, ARM, contains the criteria for bacteriological, chemical and radiological requirements for public water systems. This portion of the rule provides monitoring frequency requirements, maximum contaminant levels for regulated contaminants, treatment requirements and reporting procedures for monitoring results. MDEQ currently maintains a computer database of the distribution, source, entry point and monitoring information. This database is updated whenever new monitoring results are received, modifications to the system are constructed or violations occur.

MDEQ has adopted cross-connection rules (Title 17, Chapter 38, Sub-Chapter 3, ARM) that specifically state all cross-connections in a public water system must be eliminated either through disconnection to the system or installation and maintenance of an approved backflow prevention assembly.

CAPACITY DEVELOPMENT CONTROL POINTS

As mentioned earlier, MDEQ elected to place capacity development requirements in existing rules and circulars. The major rule changes that include capacity requirements are as follows:

1. Section 17.38.101(4)(g) was modified to require MDEQ notification when a change of ownership occurs.

2. Section 17.38.101(7) was modified to require completion of construction, alteration or extension of a public system within three years of approval. This section formerly required that construction, alteration or extension of a public system commence within two years. This modification ensures that new systems or system modifications are installed based on the most current design criteria and technology.

3. Section 17.38.101(9) was modified to require MDEQ notification prior to a public system being operated. This section further requires that as-builts for the new system or portion of the new system constructed to date, be furnished to MDEQ within 90 days after the system becomes operational. These modifications allow MDEQ to have a more accurate inventory of operating public systems.

4. Section 17.38.101(10) was added to require proper certification to MDEQ that the system was built in accordance with the approved plans.

These sections provide MDEQ with control points on new water systems and result in a more accurate database of new public water systems.

In addition to the rule modifications, MDEQ added capacity development requirements to its existing design circulars, DEQ 1 and DEQ 3. MDEQ requires that proposed public systems provide an engineering report, plans and specifications for review and approval. Both of these circulars were modified to include criteria for new technologies available for water systems. The following capacity development requirements were included in each circular:

1. A groundwater under the direct influence of surface water assessment must be performed for each new groundwater source. MDEQ created a new circular, PWS-5, which describes the information necessary for performing this assessment.

2. A source water assessment plan must be developed for each new source. MDEQ created a new circular, PWS-6, which describes the information necessary for performing this assessment.

3. New systems must provide detailed information on ownership, management, operation, maintenance and financing of the new system. MDEQ requests specific capacity information in the appendices of DEQ 1 and DEQ 3. Similar information is requested for non-transient non-community systems.

MDEQ has developed a guidance manual for applicants to assist in compiling the information necessary to meet the capacity development requirements. The manual is available in hard copy and electronically.

IMPLEMENTATION OF A FULLY FUNCTIONING PROGRAM

After the state's capacity development rules became effective on September 10, 1999, MDEQ provided training to consultants, developers and city-county officials. The training focused on assembling the necessary information in the proper format to comply with the capacity development rules, particularly groundwater under the direct influence of surface water assessment, source water assessment and financial information. These three facets of the capacity development rules are the most labor-intensive requirements for consultants and developers to address.

MDEQ tracks the progress of new community and non-transient non-community water systems throughout the approval process and during operation of the system. MDEQ currently has a computer database system that contains the following information for each active public water supply system in the state:

1. owner, owner's address, contact person, operator and size of system,
2. source and entry point information,
3. sampling profile for each entry point,
4. sampling results for all regulated contaminants,
5. remarks and history information of the system, such as system improvements or violations, and
6. results of sanitary surveys.

As part of the capacity requirements, information on system startup, records of as-built plans and certification, groundwater under the direct influence of surface water assessment and source water assessment are included in the database for each new community and non-transient non-community water system. MDEQ personnel routinely query the database in order to ensure that new systems have met all applicable capacity development requirements. MDEQ has the authority to assess penalties against systems that fail to comply with capacity development requirements.

MDEQ's Operator Certification Program works closely with the Public Water Supply and DWSRF programs to ensure that all new community and non-transient non-community water systems have appropriately certified operators. As in the past, the Operator Certification Program continues to be a strong component in the state's capacity development strategy.

MDEQ's Source Water Protection Program also contributes to new water system capacity through its involvement in the review and approval of source water assessment plans for new water sources. The Source Water Protection Program staff identifies new sources at risk due to geological conditions, source construction or potential contaminant sources and ensures that adequate treatment is provided at those sources. The efforts of the Source Water Protection Program have resulted in improved source water protection and proactive water treatment requirements.

As part of its plan review procedures, MDEQ's Public Water Supply Program ensures that new systems demonstrate adequate capacity. EPA guidance excludes from this requirement those systems with pre-existing infrastructure, that is, those systems with infrastructure constructed or approved for construction before September 10, 1999.

Public Water Supply Bureau (PWSB) dashboard tools have been developed and implemented internally to assist MTDEQ PWS regulatory effectiveness. These tools include; PWS Compliance Tracking Tool, Chronic Violation Dashboard, and Enforcement Dashboard (draft). In addition, the MTDEQ PWS Rules Coordinator submits quarterly annotated ETT lists to EPA with status annotations for existing public water supplies that exceed 10 ETT points. These quarterly lists are available for internal use within MTDEQ PWS.

IMPLEMENTATION OF ASSET MANAGEMENT §1420(c)(2)(a-f)

America's Water Infrastructure Act of 2018 (AWIA) amended Section 1420(c) to add asset management into their state capacity development strategies. AWIA contains the following requirements: (1) encourage public water supplies (PWSs) to create asset management plans (AMPs); (2) assist public water systems in training to implement AMPs; (3) include a summary of these efforts in a triennial capacity development report to the governor. Consistent with this statutory change, state drinking water programs are expected to revise their capacity development strategies to include a description of how asset management will be promoted through addressing the five-core-question framework of asset management. This provision aligns with EPA's strategic measure of reducing the number of public water supply systems with health-based violations by ensuring long-term sustainability of the public water supply systems.

Montana asset management efforts include (but not limited to):

- Implement and support a designated Capacity Development Coordinator position in MDEQ PWS. The long-term goals of this position will direct capacity development efforts with emphasis on asset management, serve as the technical assistance specialist for

PWSs with persistent issues, and continue to develop Montana's involvement in the Area Wide Optimization Program (AWOP).

- A Capacity Development Specialist has been hired to expand the MTDEQ PWS Capacity Development Program and assist the Capacity Development Coordinator to improve state PWS coverage.
- The Capacity Development Coordinator has fully taken over the State Revolving Fund TMF contract management duties. This includes 40-hours of procurement training.
- Asset management questions have been incorporated into the capacity development self-assessment form.
- Table A-1 (financial page) has been placed back into DEQ-1 and is referenced in DEQ-3.
- A capacity development webpage is under construction, and includes asset management tools and resources. The page is now accessible to the general public.
- DEQ PWS will create a drop-box within the capacity development webpage for systems to submit their asset management plans for professional review.
- MDEQ PWS Field Staff must discuss CD/AM with the system representative, verify if the system has an asset management plan, present the representative with a business card that has the Capacity Development Coordinator contact information on the back, and note CD/AM contact within the sanitary survey inspection reports.
- Expansion of the Operator Certification Program to include facility-based training water and wastewater opportunities for CD and AM centered training through approved providers. Creation of an asset management plan must be emphasized. Area technical assistance providers were encouraged to develop asset management knowledge through additional formal training.
- Continue to offer capacity development training opportunities with an emphasis on asset management tools throughout Montana, and encourage area technical assistance providers to promote system specific asset management plans through field visits and annual training events.

SUMMARY OF ASSESSMENTS OF TECHNICAL, FINANCIAL AND MANAGERIAL CAPACITY OF SYSTEMS SEEKING DWSRF ASSISTANCE

Between July 1, 2024, and June 30, 2025, Montana's DWSRF Program issued loans to 23 water systems throughout the state. A technical, financial and managerial capacity assessment was conducted on each system prior to loan commitment. The results of these assessments are summarized in the following table:

STATEWIDE CAPACITY REVIEWS		Totals	System type		System size (population served)		
			CWS	NTNC	<1000	1000-3300	>3300
Passed		**24**	**23**	**1**	**13**	**4**	**7**
Failed		**0**	**0**	**0**	**0**	**0**	**0**
Failed – requiring restructuring		**0**	**0**	**0**	**0**	**0**	**0**
Systems with ETT $\geq$ 11 requesting assistance	**Funded**	**0**	**0**	**0**	**0**	**0**	**0**
	Not funded	**0**	**0**	**0**	**0**	**0**	**0**

All systems provided with DWSRF funding between July 1, 2024, and June 30, 2025, were community systems with the exception of one non-transient non-community system (a school). Of the total, thirteen of the systems had populations less than 1000, four had a population from 1000 to 3300, and seven had populations exceeding 3300.

MDEQ has not made and is not planning to make any changes in the capacity assessment methodology used for determining the eligibility of water systems seeking DWSRF assistance.

NONCOMPLIANT SYSTEMS RECEIVING DWSRF ASSISTANCE

In December 2009 EPA's Office of Enforcement and Compliance Assurance released the Enforcement Response Policy, an enforcement targeting approach that identifies all unaddressed regulatory violations at a public water system. In 2013 this new approach replaced the prior strategy, which focused on noncompliant water systems on a rule-by-rule basis. The Enforcement Response Policy is supported by the Enforcement Targeting Tool, which assigns a point value to individual violations at each system to help prioritize drinking water systems with the most serious, numerous, or long-lasting unaddressed violations for possible enforcement. Drinking water systems with Enforcement Targeting Tool scores equal to or exceeding 11 are considered a high priority for enforcement action.

Of the 23 systems receiving DWSRF assistance between July 1, 2024, and June 30, 2025, one had an Enforcement Targeting Tool score equal to or exceeding 11 at the time of loan issuance. PWSID MT0000359 currently has an ETT score greater than 10 and is under an Administrative order-on-consent (AOC). The approved DWSRF project will correct the AOC and can be funded. PWSID MT0000524 funding was approved through DWSRF prior to being placed under an AOC.

MDEQ has not made and is not planning to make any changes in the procedures used for assessing whether DWSRF assistance will ensure compliance of water systems.

SYSTEMS REQUIRED TO UNDERGO RESTRUCTURING IN ORDER TO RECEIVE DWSRF ASSISTANCE

Of the 23 systems receiving DWSRF assistance between July 1, 2024, and June 30, 2025, none were required to undergo restructuring in order to receive DWSRF assistance.

MDEQ has not made, and is not planning to make, any changes in the assessment procedure used to determine whether water systems seeking DWSRF assistance need to undergo restructuring. This procedure has undergone public review and is documented in the state's DWSRF operating agreement.